



# GENERAL TERMS AND CONDITIONS

AirCom Pneumatic GmbH  
Siemensstraße 18, 40885 Ratingen

(as of May 12th, 2022)

## § 1 GENERAL INFORMATION / SCOPE

1. The following General Terms and Conditions are valid for all contracts between the company AirCom Pneumatic GmbH, Siemensstraße 18, 40885 Ratingen („Seller“) and companies (§ 14 BGB), body corporate organised under public law and special assets under public law („Purchaser“).
2. The acceptance of the order confirmation as well as the receipt of deliveries of the Seller is valid as recognising these general terms and conditions even in cases where the Purchaser has submitted an offer based on own general terms and conditions.
3. Contrary or deviating conditions of the Purchaser are not recognised unless the validity of contrary or deviating conditions is explicitly accepted in writing.
4. An explicit rejection of deviating conditions of the Purchaser is not necessary.
5. Any individual agreement concluded between the parties shall take precedence over the General Terms and Conditions.

## § 2 CONTRACT CONCLUSION

1. The offers are non-binding and without obligation. The contract is not concluded until the order confirmation of the Seller is signed.
2. Deviations, supplements, and verbal agreements as well as agreements with travelling salesmen, representatives and agents require the written confirmation by the Seller to be valid when the contract is closed.
3. Minimal deviations by the delivered objects from the description of the offer or the order confirmation are considered as authorised and do not affect the fulfilment of the contract insofar as they concern conventional quantity and quality tolerances; in particular in cases of modifications and improvements that are based on technical development.
4. Quotations, drawings, graphics and other documentations of the offer and order confirmation are meant only for the Purchaser and must not be made available to third parties. They remain property of the Seller and are protected by copyright. They must be returned upon request or if the order was not placed.

## § 3 PRICES AND PAYMENT

1. The price lists, price quotations and cost estimates are without obligation.
2. The specified prices are valid only for the concrete order determined by amount and delivery time. If our general de-

livery prices increase or drop before the delivery, the price for the individual order increases or diminishes accordingly. Price increases are limited by the price prevailing on the market. If a basic agreement has been signed by the parties, then the prices specified in it are valid for its validity period, deviating from sentence 1 and 2 of this number.

3. All prices are net prices and are understood as ex works or warehouse plus freight, transport insurance (see below § 4 (5)), brokerage fees, bank charges and the respective statutory value added tax as well as any possible handling costs if the latter are agreed upon between the two parties.

4. Payment is due within 30 days upon invoice date without deductions and only to the Seller. Further price reductions, rebates or deductions are not granted. A cash discount deduction of new invoices is not permitted if older due invoices are still unpaid.

In the absence of other agreements, a payment to the Seller can be made only according to the specifications of the issued invoice. The employees of the Seller, representatives and travelling salesmen are only permitted to collect payment if a special written authority to collect is submitted. Bills of exchange can be accepted for payment only upon prior agreement. The acceptance of cheques and bills of exchange is done only as payment. Discount charges and collection expenses are at the expense of the Purchaser.

5. If the contracted payment terms are exceeded, default interest is charged to the amount of 9 percentage points above the respective base interest rate.

6. The Seller is not obligated to fulfilling the contract if the Purchaser does not meet his obligations as contracted, in particular when due invoices are not paid. Compensation or assertion of the right of retention based on claims from the Purchaser that are not explicitly recognised in writing by the Seller is excluded insofar as it does not concern undisputed or legally effective claims.

7. If the Purchaser owes compensation for damages because of non-performance according to the general legal provisions, then the Purchaser is obligated to pay the Seller an amount of 15 % of the order amount including VAT as compensation for damages, subject to the assertion of further damages, unless the Purchaser can prove that there was no damage or loss of value or significantly less than the aforementioned flat rate.

#### **§ 4 DELIVERY AND SHIPMENT / TRANSFER OF RISK**

1. The written order confirmation of the Seller is solely applicable for the scope of the delivery.

2. Delivery is as quick as possible, the latest though within about eight weeks after the start of the delivery time. The delivery to the Purchaser is always subject to punctual and correct supply to the Seller. The delivery time begins with the sending of the order confirmation, however, not before receiving the documentation, authorisations, or releases to be provided by the Purchaser or before an agreed down payment has been received. The delivery time is maintained if the delivery item has left the factory or the readiness for dispatch has been informed before the delivery time's expiration. Maintaining of the delivery time requires that all contractual obligations be met by the Purchaser.

3. All cases of force majeure release the Seller from the obligation for fulfilling the contract for the duration and the scope of the occasion. Force majeure are considered in particular to be natural disasters, war or the risk of war, reactor accidents, epidemics and pandemics, labour strife, strikes, lockouts, unforeseeable disruption of operations or shortage of raw materials, limitation of energy supply by third parties or other events that are not the responsibility of the Seller. Claim for damages by the Purchaser are ruled out. In case of permanent impossibility of performance, the parties retain the right of immediate withdrawal; any advance performances shall be returned. This is also valid if such situations occur after the delivery date has been exceeded.



4. If the delivery item is shipped to the Purchaser upon his request, then the risk of the accidental loss or accidental degradation of the delivery item is transferred to the Purchaser with the dispatch to the Purchaser or at the latest when the delivery item has left the factory or the warehouse of the Seller, unless something else was agreed upon. This is valid regardless of who pays the shipping costs. If the shipment is delayed upon request by the Purchaser, the risk is transferred when the readiness for delivery has been reported.

5. For total net order values equal to or greater than EUR 1,000.00 the Seller shall take out a transport insurance of 0.5% of the order value for the shipment at the expense of the Purchaser. This provision shall not apply for customers exempted from forwarding, logistics and warehousing insurance (SLVS waiver customers).

6. Claims for wrong or incomplete delivery due to obvious defects are ruled out if they are not reported in writing within a week upon arrival of the delivery item at its destination.

## **§ 5 ACCEPTANCE AND ASSEMBLY**

1. Merchandise that is reported as ready for shipment must be fetched promptly by the Purchaser. If the Purchaser falls into arrears with the fetching, the acceptance or the picking up of the merchandise, then the Seller has the right to demand compensation of the occurred damage. With the start of the acceptance delay, the risk of accidental degradation or accidental loss is transferred to the Purchaser.

2. The offer of the Seller excludes the assembly.

## **§ 6 RETENTION OF TITLE**

1. The delivered merchandise remains the property of the Seller (reserved goods) until final payment of all claims made or being made based on the business relationship. If there are multiple claims or open invoices, the retention of title is valid as a collateral for the outstanding balance, even if individual merchandise shipments have already been paid.

2. In case the Purchaser acts contrary to the stipulations of the contract, for example delayed payment, the Seller has the right, upon preliminary setting of a reasonable deadline, to take back the reserved goods. If the reserved goods are taken back, this represents a withdrawal from the contract. The Seller has the right to dispose of the reserved goods after the retraction. After subtracting a reasonable amount for the disposal costs, the disposal proceeds are to be settled with the amounts owed by the Purchaser. The Purchaser is liable for the claim for the deficiency.

3. In case of third parties claiming the reserved goods, in particular distraints, the Purchaser will inform about the ownership of the Seller and will promptly notify the Seller so that owner rights can be asserted. Costs incurred thereby are borne by the Purchaser.

4. The Purchaser has the right to process and sell the reserved goods in normal course of business as long as he does not fall into arrears. Pledges as collateral or transfers by way of security are not permitted. Claims ensuing from the resale or other legal basis (insurance, unlawful act) regarding the reserved goods, are fully transferred already now by the Purchaser to the Seller as a collateral. Upon request of the Seller, the Purchaser must notify debtors of the assignment. The Purchaser is obligated to also reserve ownership of the reserved goods towards his Purchaser until it is paid in full. The Seller gives the revocable right to the Purchaser to collect the claims ceded to the Seller for his invoice in his own name. The direct debit authorisation becomes void if the Purchaser does not fulfil his payment obligations properly, has difficulty in meeting payments, judicial execution proceedings are taken against him or insolvency proceeding are filed against him or the filing of such insolvency proceedings are refused due to lack of assets.

5. Processing or transformation of the goods is always done for the Seller as manufacturer, but without obligation for him. If the delivery items are processed with other items not belonging to the Seller, then he acquires joint ownership of the new item in the ratio of the value of the delivery items to the other processed items at the time of the processing. If the delivery items are combined or inseparably mixed with other items not belonging to the Seller, then the Seller acquires

res joint ownership of the new item in the ratio of the value of the delivery items to the other combined or mixed items. If the combination or mixture of the item of the Purchaser is to be regarded as main item, then it is agreed upon that the Purchaser transfers the proportion of the joint ownership of the new item to the Seller. The Purchaser stores the thus created joint ownership for the Seller.

6. The Seller is obligated to release the collaterals to which he is entitled insofar as the realisable value of the collaterals exceeds the claims by more than 10 %; the Seller has the choice thereby of the collaterals to be released.

## **§ 7 GUARANTEE / LIABILITY**

1. If contractual obligations are infringed, the Purchaser has the legal rights in compliance with the following regulations.

2. The Purchaser can only file guarantee claims if he has performed his inspection and complaint obligations according to § 377 HGB (German Commercial Code) within a week of receiving the service. Contract, type, and scope of the defect must be specified during the notification.

3. The warranty is also under the condition that the Seller has the choice to view and check the faulty item at the Purchaser or having it sent back to the Seller.

4. The statutory limitation period for defects claims is one year after the transfer of risk. This is not valid unless the law requires longer periods in accordance with §§ 438 Section 1 no.2 (Construction Work and Objects for Construction Work), 478, 479 (Supplier Regress) and 634 a Section 1 no.2 (building defects) of the BGB (Civil Code) as well as in cases of injury to life, physical injury, or damage to health due to intentional or negligent dereliction of duty on the part of the Seller and if a defect was fraudulently concealed.

5. In case of an entitled and timely notification of defects, the Purchaser has the right to supplementary performance during the warranty period. The Seller has the right of choice for the type of supplementary performance – repairing the defect or delivery of a fault-free item. If the supplementary performance fails or if further supplementary performances are unacceptable for the Purchaser, then the Purchaser has the right to reduction or the withdrawal from the contract. Replaced parts become the property of the Seller.

6. If claims are made towards the Purchaser by his customer or a consumer due to a defect of the delivered merchandise that was already present during the transfer of risk or that was complained about by a consumer as end user, the legal claims to recourse of the Purchaser towards the Seller remain untouched in accordance with §§ 478, 479 BGB.

7. Claim for damages due to a defect can be asserted by the Purchaser only if the supplementary performance has failed or if we deny the supplementary performance. The right of the Purchaser to assertion of the right of further claim for damages remains untouched by that.

8. Claims against the Seller due to defects may only be made by the Purchaser and are not assignable.

9. The Seller is liable for occurring damages only insofar as they stem from a breach of an essential contractual duty or intentional or grossly negligent behaviour on the part of its legal representatives or vicarious agents. If an essential contractual duty is only slightly negligently breached, then the liability is limited to the foreseeable damages typical for the contract. An essential contractual duty prevails for obligations whose fulfilment makes the proper execution of the contract even possible and which the Purchaser has expected to be complied with or could expect to be complied with. Any further liability for compensation is ruled out. The liability for culpable injury to life, body, and health in accordance with legal regulations remains untouched. This is also valid for mandatory liability in accordance with the product liability law.



## **§ 8 DISCLOSURE OF PERSONAL DATA FOR THE PURPOSE OF LAW ENFORCEMENT AND DEBT COLLECTION**

1. In the event of a legitimate interest according to Art. 6 para. 1 lit. f GDPR, particularly in case of payment default, the Seller reserves the right to disclose the data provided when placing the order for law enforcement and debt collection purposes to a lawyer and/or external companies (e. g. AKZEPTA GmbH, Krausenstraße 8, D-10117 Berlin).

2. Furthermore the Seller collects address information, information on the Purchaser's payment behaviour and credit worthiness based on mathematical and statistical methods applying address data information from external companies such as CRIF Bürgel GmbH, Radlkoferstraße 2, D-81373 Munich, to fulfil the contract. The processing of this data is necessary to fulfil contractual purposes or implement pre-contractual measures (Art. 6(1)(b)) and to protect the legitimate interests of the Seller (Art. 6 (1)(f)).

3. Declaration of consent, Art. 6 (1)(a) GDPR

The Purchaser declares as follows: **„I hereby agree that AirCom Pneumatic GmbH collects and processes address information, information on my payment behaviour and credit worthiness based on mathematical and statistical methods from external companies such as CRIF Bürgel GmbH, Radlkoferstraße 2, D-81373 Munich, applying address data information for the purpose of the conclusion of contract.”**

The Purchaser declares furthermore as follows:

**„I hereby agree that AirCom Pneumatic GmbH discloses data provided when placing an order to lawyers or external companies such as AKZEPTA GmbH, Krausenstraße 8, D-10117 Berlin, for the purpose of law enforcement and debt collection.”**

4. Possibility of revocation / Possibility of opposition

The consent given to the Seller can be revoked by the Purchaser at any time. This does not affect the legality of the collection and use of the data based on this consent until the consent is withdrawn. The Purchaser is entitled to object at any time to the processing of its data. This applies if the processing is not required to fulfil a contract with the Purchaser or precontractual measures or does not preclude legitimate interests of the Seller in particular.

## **§ 9 FINAL PROVISIONS**

1. Place of performance for all delivery obligations of the Seller and for other contractual obligation of both parties is the registered office of the Seller AirCom Pneumatic GmbH, Siemensstraße 18, 40885 Ratingen.

2. The contract concluded between the parties, the terms, and conditions of the Seller as well as all the legal relations between the Purchaser and the Seller are subject to the laws of the Federal Republic of Germany with the exclusion of all references to other legal orders and international contracts. The United Nations Convention on Contracts is excluded.

3. The place of jurisdiction for all disputes arising from this contractual relationship is Düsseldorf, insofar as Seller and Purchaser do not constitute a different common place of jurisdiction. The Seller has the right, however, to file suit against the Purchaser also at his registered office.

4. Should a provision of these terms and conditions be ineffective or contain an omission, then the effectiveness of the remaining provisions remain unaffected.